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International Convention for the Protection of All Persons from Enforced Disappearance

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Committee on Enforced Disappearances
Eighth session

Summary record of the 120th meeting
Held at the Palais Wilson, Geneva, on Monday, 2 February 2015, at 3 p.m.

Chairperson: Mr. Decaux

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The meeting was called to order at 3 p m.

Consideration of reports of States parties to the Convention (*continued*)

Initial report of Mexico (continued) (CED/C/MEX/1 and CED/C/MEX/Q/1)

1. *At the invitation of the Chairperson, the delegation of Mexico took places at the Committee table.*

2. **The Chairperson** invited the delegation to take up the questions posed at the previous meeting (CED/C/SR.119).

3. **Ms. García Laguna** (Mexico) said that, pursuant to constitutional reform provisions enacted in 2014, steps were currently being taken to reorganize the Office of the Attorney General of the Republic to make it independent from the federal executive branch. The reorganized Office would have special powers to investigate human rights violations, including cases of enforced disappearance. As part of efforts to prepare for the transition, staff were receiving specialist training from a wide range of national and international experts. Officials were also analysing past cases of enforced disappearance with a view to making recommendations for improving investigative techniques and formulating a national training programme in that area.

4. On 19 December 2014, the National Council for Public Security had given its approval for the establishment of a standard protocol for the investigation of enforced disappearance. The protocol would define the areas of responsibility and powers of the various investigative authorities, and compliance with it would be mandatory for all of the country's public security bodies and forensic medical services. Consultations were currently being held with organizations of victims' families and experts in order to ensure that the protocol reflected their recommendations as well. For instance, a system would be put in place to monitor the performance of police officials and other government agents and to ensure the participation of victims of enforced disappearance in the investigative process.

5. Under the protocol and pursuant to article 21 of the Victims Act, the competent authorities would be required to take immediate action to locate persons reported as missing. A specialized search unit had already been set up by the Nuevo León state authorities in collaboration with a civil society organization, in accordance with the provisions of the Act. In 2014, its first year of operation, the unit had succeeded in locating over 90 per cent of persons reported missing within 72 hours after the initial notification.

6. In all, 29 people had been placed under the victim and witness protection programme of the Attorney General's Office. That figure included the five individuals who had been placed under protection in response to requests for urgent action from the Committee.

7. With regard to the investigation of state officials in relation to cases of enforced disappearance, she said that, according to information available at the federal level, 313 officials had been indicted and 13 had been convicted to date.

8. The database associated with the National Registry of Missing and Disappeared Persons was populated with information provided by prosecutors' offices of the various states; it had been updated in 2014 in line with standardized criteria aimed at eliminating duplication and inconsistencies. As part of that process, the families of missing or disappeared persons had been contacted in order to verify the reliability of data. While further work was still required to improve the system, it was currently possible to obtain disaggregated data on various aspects, including, for example, cases of enforced disappearance committed by private individuals.

9. Lastly, with respect to the question of foreign migrants reported as missing and believed to have died in Mexico, a forensic committee established in 2014 was working closely with counterpart agencies in El Salvador, Guatemala and Honduras in order to positively identify those persons.

10. **Mr. Zerón de Lucio** (Mexico) said that the Criminal Investigation Agency had been established with the aim of investigating and prosecuting crimes more effectively. To that end, emphasis had been placed on gathering accurate intelligence, collecting reliable forensic evidence and improving inter-agency coordination both nationally and internationally. The Agency's personnel were highly qualified, and its operating standards were fully in line with international good practice.

11. **Ms. Cárdenas Cantú** (Mexico) said that there was currently no single definition of the crime of enforced disappearance in Mexico, as the offence came under the jurisdiction of the courts at either the federal or the state level depending on the authority involved in the commission of the offence. In order to address that issue, the Congress was considering a proposal to introduce a general law of national application for the prevention, investigation and punishment of the crime of enforced disappearance. It was hoped that it would be possible to pass such a law during the current legislature, once the necessary constitutional amendments had been adopted.

12. **Ms. Festinher Arias** (Mexico) said that the proposed general law on enforced disappearance would determine the respective powers of the federal and state governments, define the conduct that constituted enforced disappearance and establish standardized penalties. An interministerial group had been set up to draft the law in accordance with the Convention, with particular attention being devoted in that respect to provisions concerning the definition of the offence, criminal responsibility, the statute of limitations, extradition procedures, judicial guarantees for the accused and access to justice. Consultations would be held in due course with civil society organizations in order to canvass their views.

13. **Mr. Hernández Barros** (Mexico) said that the Executive Commission for Victim Support was a decentralized body which operated with a high degree of independence. Members of the Commission represented the three levels of government in Mexico — federal, state and municipal — and the three branches of government — executive, legislative and judicial. The Commission's responsibilities included delivering immediate support for the victims of enforced disappearance, setting up a national registry of victims, providing legal advice and establishing an aid, assistance and comprehensive redress fund. The Commission was also responsible for formulating, implementing and monitoring public policies that incorporated best practice in victim support. In addition, the Commission worked with civil society organizations to ensure that Central American migrants who had been victims of human rights violations were repatriated and received reparation.

14. **Ms. Peláez** (Mexico) said that the Strategic General Directorate for Human Rights of the Ministry of the Interior was the federal body tasked with liaising with the Executive Commission for Victim Support. The General Directorate was also responsible for working with other public and private victim support organizations, developing the necessary mechanisms for implementing the Victims Act and establishing inter-agency coordination to prevent the violation of victims' rights.

15. Compensation agreements had been reached in 31 per cent of the 275 cases referred to by the National Human Rights Commission in its recommendation No. 26/2011 concerning compensation for victims of human rights violations associated with social and political movements in the 1960s and 1970s. The outstanding cases would be processed as soon as the contact details of the beneficiaries had been confirmed.

16. The Beta migrant protection groups were special units established to protect migrants in transit through Mexico by, for example, delivering humanitarian assistance, providing legal advice and disseminating information on relevant government measures. Specially trained child protection officers of the National Migration Institute were tasked with providing care and support for, in particular, unaccompanied child migrants in transit through the country.

17. **Mr. Beltrán Benites** (Mexico) said that, pursuant to the recently amended Code of Military Justice, cases of human rights violations committed against civilians by military personnel were no longer heard by military courts. Furthermore, cases involving the commission of such violations against military personnel by other military personnel could be heard by civilian courts provided that they had not been committed by personnel in active service. Military prosecutors investigating alleged human rights violations immediately referred all cases that did not fall within the jurisdiction of the military courts to the competent civilian authorities. No cases of alleged enforced disappearance were currently being processed by the military courts. While military personnel facing charges of enforced disappearance were generally held in civilian detention centres, it was possible in exceptional circumstances for the competent civilian judge to order their detention in military facilities. All procedural safeguards were respected regardless of the place of detention.

18. **Mr. Zerón de Lucio** (Mexico), replying to a question raised at the previous meeting concerning the events in Iguala, said that the Office of the Attorney General had taken cognizance of the matter on 26 September 2014.

19. **Mr. Alday González** (Mexico), replying to a question put by Ms. Janina at the previous meeting regarding the participation of civil society organizations in the preparation of reports to treaty bodies, said that the Government systematically held consultations with such organizations both prior to and following the submission of reports. Thanks to those dialogues, it was possible to identify opportunities for establishing road maps for implementing the recommendations of the various treaty bodies. During the preparation of the initial report to the Committee, however, it had proved difficult to engage in such a dialogue with stakeholders because of delays in the drafting process.

20. **Mr. Gómez Robledo** (Mexico) said that, when depositing its instrument of ratification of the Inter-American Convention on Forced Disappearance of Persons, Mexico had made an interpretative declaration stating that the provisions of that Convention would apply to acts constituting the forced disappearance of persons ordered, executed or committed after the entry into force of the Convention for Mexico. At a later date, the Supreme Court had decided that all case law of the Inter-American Court of Human Rights was applicable in Mexico, even that corresponding to cases in which Mexico had not acted as a party. There had subsequently been a series of developments in that regard that could lead to the conclusion that the inter-American Convention was, in fact, retroactively applicable.

21. The recognition by Mexico of the competence of the Committee on Enforced Disappearances to receive individual communications was under active consideration by the Government; however, any such recognition required approval by the Senate.

22. **Mr. Hazan**, referring to the "dirty war" disappearance cases, asked why the Office of the Special Prosecutor for Social and Political Movements of the Past had been disbanded. Inasmuch as the Guerrero Truth Commission had uncovered evidence showing that military orders had been given to carry out acts of enforced disappearance during that period, he wished to know what impact that information had had or was expected to have on the prosecution of those responsible. He also wished to know what impact the

declassified files of security agencies, described in paragraph 40 of the State party's report, had had on the corresponding investigations.

23. He asked whether the State party kept a register of murders, threats or acts of violence perpetrated against relatives of disappeared persons and human rights defenders and whether it had set up a special body to provide protection for witnesses, victims and other persons taking part in judicial proceedings involving enforced disappearance. He enquired as to whether persons of State security agencies who worked as bodyguards for relatives of disappeared persons were provided with special training, given the delicate nature of their position as agents of the State who guarded victims of the State. The sensitization of such personnel was necessary in order to avoid revictimization. He would like to know whether other types of protection measures, aside from bodyguards, were provided in enforced disappearance cases.

24. He asked whether the Federal Act for the Protection of Persons Taking Part in Criminal Proceedings applied solely to cases tried at the federal level or whether the institutions that had been established pursuant to the Act could also be accessed in cases before state courts. If not, had the states enacted similar laws? He wished to know whether any mechanisms were in place to exclude a security force — as a whole — from the conduct of a criminal investigation in cases in which one or more of its members was implicated.

25. **Mr. Huhle** said that he would appreciate additional information concerning the legislative process for the adoption of general legislation of national application, especially in the event that state laws were not consistent with them, as appeared to be the case with the proposed general law on enforced disappearance. He asked whether crimes against humanity could be considered in-service conduct and therefore be tried by military courts or whether such crimes were excluded from military criminal jurisdiction.

26. **Mr. López Ortega** asked how many cases there had been in which State officials had been suspended from their duties as an interim measure and what proportion they represented of the total number of cases investigated.

The meeting was suspended at 4.10 p.m. and resumed at 4.40 p.m.

27. **Mr. Gómez Robledo** (Mexico) said that, even though Mexico had not yet recognized the competence of the Committee under article 31 of the Convention, that did not mean that it failed to provide protection to individuals who had lodged complaints against the State. When it received requests for urgent action from the Committee, it responded to them with the utmost diligence.

28. **Ms. García Laguna** (Mexico) said that the Office of the Special Prosecutor for Social and Political Movements of the Past had been disbanded primarily because it had not been effective. The reasons were that, at the time of its activities, it had had to deal with a very narrowly circumscribed judicial culture and system, which, in turn, had limited its capacity to search for missing persons, identify remains or prosecute offences committed by organized power structures. After the dissolution of the Office, all of the case files on record with it had been transferred to the General Coordinator for Investigations of the Attorney General's Office; they had also been declassified and could be consulted in the national archives.

29. The Office of the Attorney General, through the Federal Investigative Police of the Federal Investigation Agency, had set up a special committee that was responsible for implementing interim and protection measures for victims and witnesses. The staff in charge of carrying out such measures had been trained, and a series of guidelines had been drawn up that expressly referred to the obligation not to revictimize persons being offered protection. Article 4 of the Victims Act made reference to both direct and indirect victims

and was in line with article 24 of the Convention. The Act provided for a high level of protection and was consistent with international instruments relating to victim protection. The Federal Act for the Protection of Persons Taking Part in Criminal Proceedings was, in fact, federal legislation. It was currently being reviewed and was expected to be amended as a result.

30. **Mr. Baltazar Samayoa** (Mexico) said that, under article 10 of the Federal Code of Criminal Procedure, the Attorney General's Office had jurisdiction over offences normally under the states' jurisdiction when such offences were concurrent with and linked to offences that fell under federal jurisdiction, including enforced disappearance. In fact, investigations involving a state or municipal official were not infrequently referred to the Attorney General's Office with the aim of ensuring a more objective and independent investigation.

31. **Ms. Festinher Arias** (Mexico) said that the Human Rights Defenders and Journalists Protection Act had been published on 25 June 2012. Since its adoption, 261 cases had been submitted by human rights defenders and journalists, and 534 persons had benefited from the protection afforded under the Act. In order to give effect to the measures provided for in the Act, a trust fund had been set up with an endowment of nearly US$ 20 million. Measures of protection included panic buttons, bodyguards, armoured cars and the provision of handbooks on protection. In the course of 2014, 161 cases had been submitted to the governing board of the protection and prevention mechanism, which was made up of representatives of various government institutions, including the Attorney General's Office, the Ministry of the Interior, the Ministry of Foreign Affairs and the National Human Rights Commission, as well as civil society organizations. Individuals had received protection in 141 of the 161 cases submitted to the board. The mechanism had been strengthened under a cooperation agreement with Freedom House, an NGO, in September 2013 and the process had been continued in 2014. Plans for 2015 included a capacity-building phase and the preparation of handbooks for journalists and human rights defenders.

32. **Mr. Gómez Robledo** (Mexico) said that the risk assessment methods employed by the mechanism had been upgraded and streamlined so that protection measures could be taken without delay.

33. **Mr. Beltrán Benites** (Mexico) said that, given the grave nature of crimes against humanity, the military criminal justice system did not have jurisdiction to prosecute those crimes.

34. **Ms. Cárdenas Cantú** (Mexico) said that the federal government, on the one hand, and the states, the Federal District and the municipalities, on the other, had concurrent powers. The manner in which those powers were organized was set out in legislation of national application, or the general laws. The 32 federative entities were required to adapt their legislation to the general laws. Whenever a congressional reform became necessary because the Congress had been empowered to adopt a general law in a particular area, the states and the Federal District were temporarily divested of their legislative powers in that area. However, they could continue to discharge other functions relating to the matters to be governed by the law in question. In the case of the proposed general law on enforced disappearance, they could continue to take action to prevent, investigate and punish acts of enforced disappearance.

35. **Mr. Fonseca Leal** (Mexico) said that, in June 2008, amendments had been made to the Constitution with a view to reforming the criminal justice system in Mexico, transforming it from an inquisitorial into an adversarial system. The reform would be phased in over the next eight years by the federal government, the states and the Federal District. To date, 4 federative entities operated fully under the new system, 27 were doing so partially and 1 was expected to comply in 2016. The new justice system was

characterized by the oral, public, transparent, continuous and expeditious nature of procedures, which would help to clear the backlog of cases in the courts.

36. The new National Code of Criminal Procedure established uniform criteria for all states and at all levels of criminal investigation and prosecution with regard to investigations and the protection of victims and witnesses. Among the many important aspects of the new Code were the requirement for the immediate registration of arrests, the presence of a compliance judge to verify the legality of detentions, the ordering of pretrial detention only in exceptional cases and the rule that confessions were admissible only if made before a judge. The new Code was to enter into force for the administration of justice at all levels not later than 18 June 2016.

37. **Ms. García Laguna** (Mexico) said that the reform of the criminal justice system and the move away from an inquisitorial to an adversarial system would have a major impact on the methods of investigation used by prosecution services throughout Mexico. The Attorney General's Office and the offices of the state attorneys general were in the midst of a transformation process that was expected to correct previous structural deficiencies and build capacity for new ways of investigating human rights violations, combating impunity and ensuring the rule of law in Mexico. With regard to enforced disappearance in particular, discussions were under way on the development of a standard protocol for investigations, on the need to harmonize a series of definitions in relation to the offence across agencies and on the importance of strengthening capacity at all levels in order to eradicate that phenomenon.

38. **Mr. Gómez Robledo** (Mexico) said that there were a number of discussions on Mexican social media that seemed to suggest that, had the State party come to the session having recognized the competence of the Committee, the current exercise would have been quite different in that it would have focused on consideration of specific cases. According to article 31 of the Convention, should a State party recognize the competence of the Committee, it would provide observations and comments as requested by the Committee, and communications would be considered. The meetings would be closed, and the views of the Committee would be communicated to the State party and to the authors of the communications. He asked if that interpretation was correct.

39. **The Chairperson** said that the obligations set forth in articles 31 and 32 of the Convention were optional. The Committee was of the view that recognition of its competence to receive and consider communications afforded better protection to the victims of enforced disappearance, but Mexico was not currently bound by those articles. The Committee was careful to keep separate the issues under the different articles.

40. **Mr. Huhle** said that the State party had not yet answered the question on possible measures to address urgent actions in a more timely manner. He asked for clarification on whether crimes such as enforced disappearance and torture could be excluded from military criminal jurisdiction. Article 57 of the Military Criminal Code established exclusions for common and federal offences committed by military personnel on duty, which made that article quite broad and open to interpretation. What measures were in place to limit its interpretation? As for the Iguala case, he would like to know on what basis and under whose authority the preliminary inquiry had been carried out. Why had it taken so long for the Office of the Attorney General to launch its own investigation? Human Rights Watch said that there had been reports of investigators asking victims to carry out investigations and to produce any evidence found. Moreover, he had been surprised to read in the press that the search for the 43 students had led to the discovery of the remains of another 40 persons. Why, in such cases, did the State party not systematically review all the information it had in relation to the alleged locations of mass graves?

41. **Mr. Hazan** said that he would like to know whether the State party had developed a strategy to withdraw the armed forces from the streets and to strengthen the police. Some of the Committee's questions regarding migrants had not yet been answered. With regard to the "dirty war", it seemed that many cases had been referred to different offices and then closed owing to a lack of means to investigate them. Once the new system was in place, would those investigations be resumed? The Committee had also received reports that some requests from the Truth Commission for the declassification of files had been denied; clarification was requested in that regard. He would also like to know whether the protection mechanism for human rights defenders and journalists applied also to the relatives of disappeared persons. Did the State party have a time frame for the implementation of witness protection measures or any information on the time frame for the investigation protocol? Did the State party have any idea when the law on enforced disappearance would be drafted, submitted to the Congress and implemented? Noting that the State party was working with an Argentine forensics team, he asked whether it had any forensics teams of its own. Did the ability of civilian judges to allow members of the military to be held in military prisons constitute a privilege under the Inter-American Convention on Forced Disappearance of Persons?

42. **Mr. López Ortega** said that he would like to know how many officers had been suspended from their duties for having committed an offence. He asked whether article 155 of the Code of Criminal Procedure, which referred to the suspension from duties, was directly applicable by courts at the federal and state levels? In which states was it applicable? He stressed the importance of article 32 of the Convention and asked whether its ratification was being considered by the State party.

43. **Mr. Gómez Robledo** (Mexico) said that Mexico, like many other many States parties to the Convention, was considering the ratification of article 32 but had not yet reached a decision on the matter. The decisions of the Inter-American Court of Human Rights, however, were binding for Mexico, and individual complaints from Mexico were taken to that court once all domestic remedies had been exhausted. The current exercise under article 29 of the Convention was very different from the exercise described in articles 31 and 32 and, even if the State party had recognized the competence of the Committee to receive and consider communications, that would not have affected the current meeting.

44. **Mr. Zerón de Lucio** (Mexico), in response to an earlier question, said that the Iguala case had initially been handled by the state prosecutor but had been subsequently handed over to the Office of the Attorney General because of the link with organized crime. Of the 30 bodies found, 12 had been identified through DNA samples; and 4 had been returned to the families. The Office was making every effort to identify the remaining bodies. Five police officers had been arrested on charges of enforced disappearance in connection with the 30 bodies that had been discovered in mass graves. The Office was taking concrete steps to ensure that all the perpetrators would be tried on charges of enforced disappearance.

45. **Ms. García Laguna** (Mexico) said that there was a new mechanism in place that informed the authorities about reported abductions so that searches could be launched for the missing persons. The State party was working on the establishment of a special unit within the Office of the Public Prosecutor to handle complaints submitted by the relatives of disappeared persons. The State party was using DNA samples from the relatives of disappeared persons to set up a post-mortem database that would be used for identification purposes. The State party was putting together its own national forensics team. Protection measures were implemented as soon as they were requested by the Inter-American Commission on Human Rights. As many family members of disappeared persons had become human rights defenders, the protection afforded to them was provided in great part

by the protection mechanism for human rights defenders. Protection was nevertheless also provided to other victims.

46. **Mr. Baltazar Samayoa** (Mexico) said that article 3.10 of the Code of Criminal Procedure established that the police must provide protection to victims and witnesses. Interim measures could be requested with a view to preventing acts of intimidation directed at witnesses. The Code provided for the temporary suspension from duties of public officials who had been accused of an offence.

47. **Mr. Zerón de Lucio** (Mexico) said that the investigation into the disappearance of the students in Iguala was still under way and that several warrants had been issued. The State party had 95 mobile specialized forensic laboratories, and each state had at least two such laboratories to help identify remains.

48. **Mr. Gómez Robledo** (Mexico), referring to a question about the withdrawal of the armed forces from the streets, said that the military's involvement in the situation was temporary and that steps were being taken to strengthen the police. Mexico had created a new federal police force based on the French model; the force consisted of 5,000 officers and would be expanded in the future. When Mr. Calderón had taken office as President, there had been only 7,000 police officers in Mexico; with the added new force, that number had risen to 45,000. Additional information on measures to improve security and strengthen the police would be provided at the next meeting.

The meeting rose at 5.55 p.m.